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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/930,235	02/23/1998	ANJA EITRICH	BEIERSDORF45	2748
7055	7590	07/26/2006	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			METZMAIER, DANIEL S	
			ART UNIT	PAPER NUMBER
			1712	
DATE MAILED: 07/26/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/930,235

Applicant(s)

EITRICH ET AL.

Examiner

Daniel S. Metzmaier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/10/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 12-31 are pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 12, 16-18, and 20-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Henkel KGaA, DE 4,010,393, (especially Beispiele 1-2, Tabelle 1, and abstract) as evidenced by Schambil et al, US 6,086,787.

Schambil et al is an English language family member of Henkel KGaA as shown by the foreign priority document of Schambil et al, which is the Henkel KGaA application. All remaining citations will refer to the Schambil et al reference hereafter.

Henkel KGaA and Schambil et al (column 1) discloses several prior art cosmetic emulsions as cosmetic creams. The Henkel KGaA and Schambil et al invention is directed to processes of making said emulsions having improved properties.

Henkel KGaA and Schambil et al (column 3-4, lines 66-11) state that their microemulsions are transparent or translucent. This property would appear to be inherent in the patentees' microemulsions.

Furthermore, Henkel KGaA and Schambil et al (column 1, lines 23-31) disclose prior art transparent and bluish opalescence (translucent) as microemulsions. Henkel KGaA and (column 2, lines 4 et seq) disclose the emulsions are formed by phase inversion and are characterized by particularly high particle fineness and stability. Said characterization are known to transparent and translucent microemulsions.

Henkel KGaA and Schambil et al (Table 1 and column 3, lines 52 et seq) disclose the use of glycerol esters of stearic or oleic acids among others. Henkel KGaA and Schambil et al (Table II and column 4, lines 53 et seq) disclose suitable thickeners. Henkel KGaA and Schambil et al (column 4, lines 46 et seq) discloses said glycerol

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esters are lipophilic consistency generators and would likewise function as the broadly claimed moisture retaining substances.

5. Claims 12-13, 16-18, 20, 23, and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Rhone-Poulenc Chimie, EP 0 633 018 A1. Rhone-Poulenc Chimie (Tables and page 3, lines 42-46) disclose self emulsifying translucent or transparent compositions in cosmetics. Rhone-Poulenc Chimie (Table, page 5) discloses distearate PEG 6000 and Polysorbate 20 (sorbitan monolaurate polyoxyethylene (20)), which are ethoxylated o/w emulsifiers and glycol distearate, which is a w/o emulsifier. See Table, page 5 for perfume. The guar and/or xanthan read on thickeners.

6. Claims 13-15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henkel KGaA, DE 4,010,393, (especially Beispiele 1-2, Tabelle 1, and abstract) in view of Schambil et al, US 6,086,787, Rosano, US 4,146,499. Henkel KGaA and Schambil et al discloses microemulsions as set forth in the above rejection. Said basis is incorporated herein by reference.

Henkel KGaA and Schambil et al differs from the claims in the incorporation of conventional cosmetic ingredients.

Rosano (abstract and column 1, lines 6 et seq) discloses transparent microemulsions and methods of making said microemulsions. Rosano (column 5, lines 11 et seq) discloses the microemulsions may include materials for hair conditioning and skin emollients for use in shampoos, shaving creams and hand soaps. Shaving creams are well known to contain astringents. Rosano (column 5, lines 41 et seq) further discloses the incorporation of organic solvents as conventional ingredients. Rosano

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(column 9, lines 6-24) discloses the conventional use of at least perfumes or dyestuff in said microemulsions.

These references are combinable since said references teach transparent (i.e., clear) microemulsions having cosmetic use. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention to employ conventional cosmetic ingredients shown and/or implicit in the Rosano reference for their advantageous intended function known to those having ordinary skill in the cosmetic art.

Response to Arguments

7. Applicant's arguments with respect to claims 12-31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Daniel S. Metzmaier
Primary Examiner
Art Unit 1712

DSM